

megawatts or smaller, and thus seeks to rebut the presumption in § 292.309(d), applicant must also set forth, and submit evidence of, the factual basis supporting its contention that the qualifying facility has nondiscriminatory access to the wholesale markets which are the basis for the applicant's filing.

(3) Transmission Studies and related information, including:

(i) The applicant's long-term transmission plan, conducted by applicant, or the RTO, ISO or other relevant entity;

(ii) Transmission constraints by path, element or other level of comparable detail that have occurred and/or are known and expected to occur, and any proposed mitigation including transmission construction plans;

(iii) Levels of congestion, if available;

(iv) Relevant system impact studies for the generation interconnections, already completed;

(v) Other information pertinent to showing whether transfer capability is available; and

(vi) The appropriate link to applicant's OASIS, if any, from which a qualifying facility may obtain applicant's available transfer capability (ATC) information.

(4) Describe the process, procedures and practices that qualifying facilities interconnected to the applicant's system must follow to arrange for the transmission service to transfer power to purchasers other than the applicant. This description must include the process, procedures and practices of all distribution, transmission and regional transmission facilities necessary for qualifying facility access to the market.

(5) If qualifying facilities will be required to execute new interconnection agreements, or renegotiate existing agreements so that they can effectuate wholesale sales to third-party purchasers, explain the requirements, charges and the process to be followed. Also, explain any differences in these requirements as they apply to qualifying facilities compared to other generators, or to applicant-owned generation.

(6) Applicants seeking a Commission finding pursuant to § 292.309(a)(2) or (3),

except those applicants located in ERCOT, also must provide evidence of competitive wholesale markets that provide a meaningful opportunity to sell capacity, including long-term and short-term sales, and electric energy, including long-term, short-term and real-time sales, to buyers other than the utility to which the qualifying facility is interconnected. In demonstrating that a meaningful opportunity to sell exists, provide evidence of transactions within the relevant market. Applicants must include a list of known or potential purchasers, *e.g.*, jurisdictional and non-jurisdictional utilities as well as retail energy service providers.

(7) Signature of authorized individual evidencing the accuracy and authenticity of information provided by applicant.

(8) Person(s) to whom communications regarding the filed information may be addressed, including name, title, telephone number, and mailing address.

[Order 688, 71 FR 64372, Nov. 1, 2006, as amended by Order 688-A, 72 FR 35892, June 29, 2007]

**§ 292.311 Reinstatement of obligation to purchase.**

At any time after the Commission makes a finding under §§ 292.309 and 292.310 relieving an electric utility of its obligation to purchase electric energy, a qualifying cogeneration facility, a qualifying small power production facility, a State agency, or any other affected person may apply to the Commission for an order reinstating the electric utility's obligation to purchase electric energy under this section. Such application shall set forth the factual basis upon which the application is based and describe why the conditions set forth in § 292.309(a), (b) or (c) are no longer met. After notice, including sufficient notice to potentially affected electric utilities, and opportunity for comment, the Commission shall issue an order within 90 days of such application reinstating the electric utility's obligation to purchase electric energy under this section if the Commission finds that the conditions set forth in § 292.309(a), (b), or (c) which

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relieved the obligation to purchase, are no longer met.

[Order 688, 71 FR 64372, Nov. 1, 2006]

### § 292.312 Termination of obligation to sell to qualifying facilities.

(a) Any electric utility may file an application with the Commission for relief from the mandatory obligation to sell under this section on a service territory-wide basis or a single qualifying facility basis. Such application shall set forth the factual basis upon which relief is requested and describe why the conditions set forth in paragraphs (b)(1) and (b)(2) of this section have been met. After notice, including sufficient notice to potentially affected qualifying facilities, and an opportunity for comment, the Commission shall make a final determination within 90 days of such application regarding whether the conditions set forth in paragraphs (b)(1) and (b)(2) of this section have been met.

(b) After August 8, 2005, an electric utility shall not be required to enter into a new contract or obligation to sell electric energy to a qualifying small power production facility, an existing qualifying cogeneration facility, or a new qualifying cogeneration facility if the Commission has found that;

(1) Competing retail electric suppliers are willing and able to sell and deliver electric energy to the qualifying cogeneration facility or qualifying small power production facility; and

(2) The electric utility is not required by State law to sell electric energy in its service territory.

[Order 688, 71 FR 64372, Nov. 1, 2006; 71 FR 75662, Dec. 18, 2006]

### § 292.313 Reinstatement of obligation to sell.

At any time after the Commission makes a finding under § 292.312 relieving an electric utility of its obligation to sell electric energy, a qualifying cogeneration facility, a qualifying small power production facility, a State agency, or any other affected person may apply to the Commission for an order reinstating the electric utility's obligation to purchase electric energy under this section. Such application

shall set forth the factual basis upon which the application is based and describe why the conditions set forth in Paragraph (b)(1) and (b)(2) of this section are no longer met. After notice, including sufficient notice to potentially affected utilities, and opportunity for comment, the Commission shall issue an order within 90 days of such application reinstating the electric utility's obligation to sell electric energy under this section if the Commission finds that the conditions set forth in paragraphs (b)(1) and (b)(2) of this section are no longer met.

[Order 688, 71 FR 64372, Nov. 1, 2006]

### § 292.314 Existing rights and remedies.

Nothing in this section affects the rights or remedies of any party under any contract or obligation, in effect or pending approval before the appropriate State regulatory authority or non-regulated electric utility on or before August 8, 2005, to purchase electric energy or capacity from or to sell electric energy or capacity to a qualifying cogeneration facility or qualifying small power production facility under this Act (including the right to recover costs of purchasing electric energy or capacity).

[Order 688, 71 FR 64372, Nov. 1, 2006]

## Subpart D—Implementation

AUTHORITY: Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 *et seq.*, Energy Supply and Environmental Coordination Act, 15 U.S.C. 791 *et seq.*, Federal Power Act, 16 U.S.C. 792 *et seq.*, Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*, E.O. 12009, 42 FR 46267.

SOURCE: Order 69, 45 FR 12236, Feb. 25, 1980, unless otherwise noted.

### § 292.401 Implementation of certain reporting requirements.

Any electric utility which fails to comply with the requirements of § 292.302(b) shall be subject to the same penalties to which it may be subjected for failure to comply with the requirements of the Commission's regulations issued under section 133 of PURPA.

[45 FR 12236, Feb. 25, 1980. Redesignated by Order 541, 57 FR 21734, May 22, 1992]